

## **Honolulu Authority for Rapid Transportation**

### **RESOLUTION NO. 2020-5**

#### **DIRECTING THE HART EXECUTIVE DIRECTOR AND CEO TO CANCEL THE PUBLIC-PRIVATE PARTNERSHIP PROCUREMENT FOR THE CITY CENTER GUIDEWAY AND STATIONS AND PEARL HIGHLANDS GARAGE AND TRANSIT CENTER CONTRACT**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition); and

WHEREAS, RCH Section 17-105(a) vests HART's Executive Director and CEO with the authority to "(s)ign all necessary contracts for the authority;" and

WHEREAS, RCH Section 17-104.1(a) provides that the HART Board of Directors shall "(b)e the policy making body of the authority;" and

WHEREAS, the Honolulu Rail Transit Project (H RTP) is roughly 58% complete, with approximately 16 miles of guideway and stations nearing completion in the west portion of the project; and

WHEREAS, the Pearl Highlands Garage and Transit Center and remaining 4.12 miles of guideway and eight stations in the City Center Guideway and Stations (CCGS) section of the H RTP have yet to be contracted for; and

WHEREAS, previous procurement efforts for the CCGS section have not been successful due to HART's budgetary constraints; and

WHEREAS, in July 2018 a white paper authored by HART's consultant recommended a public-private partnership (P3) as delivery method for the CCGS under a design-build-finance-operate-maintain model, which was intended to provide cost and schedule certainty, shift risk to the contractor, provide a more cost effective means to build, operate and maintain the project, and provide cost efficient financing by the contractor; and

WHEREAS, the recommended P3 Procurement (the "P3 Procurement") would be a cooperative procurement with the City and County of Honolulu, with HART overseeing the portion of the P3 Procurement regarding the designing and building of the City Center Guideway and Stations and Pearl Highlands Garage and Transit Center, the City and County of Honolulu overseeing the portion of the P3 Procurement regarding the operations and maintenance of the H RTP, and both overseeing the portion of the P3 Procurement regarding the financing of their respective portions of the P3 Procurement; and

WHEREAS, the after much information gathering, conversation, and deliberation, the HART Board of Directors found that the change to a P3 delivery method was a policy decision for the Board, and voted to authorize P3 in cooperation with the City and County of Honolulu as a delivery method, with the Board to provide oversight over HART's portion of the P3 Procurement, on September 27, 2018; and

WHEREAS, HART issued Part I of the Request for Proposals in the P3 Procurement on September 28, 2018 and issued Part II on May 3, 2019; and

WHEREAS, the deadline for pricing proposals was delayed three times, with the ultimate deadline of July 2020 – seven months behind the original schedule; and

WHEREAS, the relocation of utilities in the City Center segment of the project (CCUR) was a precondition for the P3 Procurement; and

WHEREAS, HART entered into an indefinite duration, indefinite quantities contract for the CCUR (the "CCUR contract"); and

WHEREAS, the CCUR contract is now approximately nine months behind schedule due to design and permitting issues; and

WHEREAS, in an effort to mitigate schedule issues associated with CCUR, HART issued a second procurement for the remainder of the CCUR (CCUR II) on August 7, 2020; and

WHEREAS, up to seventy (70) right of way parcels in the CCGS section have yet to be acquired, some of which are in the midst of litigation; and

WHEREAS, lack of right of way access is negatively impacting the CCUR schedule, which may be further impacted by potential design changes; and

WHEREAS, the delays associated with CCUR and right of way acquisitions will likely result in delays to the CCGS schedule and increase costs; and

WHEREAS, as the full scope of the negative financial impacts of the COVID-19 pandemic on the General Excise Tax and Transient Accommodations Tax revenues are still unknown; and

WHEREAS, in May 2020, HART adjusted its total project cost upwards from \$8.165 billion as reflected in its Recovery Plan to \$8.21 billion due to rising project costs; and

WHEREAS, in October 2020, HART further adjusted its total project cost to \$9.131 billion; and

WHEREAS, Federal Transit Administration (FTA) informed HART that it must complete the CCGS procurement by September 2020 in order for it to continue receiving funding under the Full Funding Grant Agreement (FFGA); and

WHEREAS, that deadline was subsequently extended to December 31, 2020; and

WHEREAS, HART has not received any of the remaining \$744 million under the FFGA since 2017; and

WHEREAS, the City and County of Honolulu notified HART on September 25, 2020 of its withdrawal from participation in the P3 Procurement; and

WHEREAS, the Government Affairs/Audit/Legal Matters Committee of the HART Board of Directors voted on October 15, 2020 to recommend to the full Board to direct HART's Executive Director and CEO to cancel the P3 Procurement; and

WHEREAS, in an October 16, 2020 press release, Mayor Kirk Caldwell requested that the HART Board of Directors vote to direct the HART Executive Director and CEO to cancel the P3 Procurement so that HART could work cooperatively on a CCGS delivery plan acceptable to the FTA; and

WHEREAS, given that the City's refusal to participate renders the P3 Procurement precarious at best; and

WHEREAS, given the foregoing, the Board has determined as a matter of policy that further pursuit of the P3 Procurement is impracticable given the City's lack of involvement, the difficulties presented by COVID and CCUR, and FTA concerns about timeliness in order to maintain funding eligibility; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. The HART Board of Directors determines as a matter of policy that the P3 procurement should be canceled.
2. The HART Board of Directors directs HART's Executive Director and CEO to cancel the P3 Procurement.
3. The HART Board of Directors directs HART to work cooperatively with the City and County of Honolulu to evaluate the most effective means and methods for completing the project so as to meet FTA requirements.
4. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on

\_\_\_\_\_.

---

Board Chair

ATTEST:

---

Board Executive Officer

DRAFT